

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JERRY PERKINS,

Plaintiff,

v.

AT&T OPERATIONS, INC.,

Defendant.

)
)
)
)
)
)
)
)
)
)

No. 4:10-CV-144 CAS

ORDER

This matter is before the Court on various motions. Plaintiff, who is proceeding pro se, moves for the entry of default judgment. Defendant AT&T Operations, Inc. (“AT&T”) requests leave to file its answer out of time. Defendant also moves for leave to respond to plaintiff’s motion for default judgment.

In support of its motion for leave to file an answer out of time, defendant states that due to either a miscommunication regarding the date that the complaint was served or a miscalculation of the date that its answer was due, AT&T’s Legal Department believed defendant’s answer was due on March 26, 2010, the date on which it did file an answer. Plaintiff filed his motion for default judgment on March 25, 2010, but the motion was not entered into the docket until March 26, 2010. According Mimi B, McDonald’s affidavit, defense counsel did not receive a copy of plaintiff’s motion for default judgment until April 12, 2010. The next day she moved for leave to file the answer out of time.

After reviewing the parties’ motions, memoranda and supporting documents, the Court finds AT&T’s failure to file a timely response to plaintiff’s complaint was due to excusable neglect. See Rule 6(b) Fed. R. Civ. P. The Court finds AT&T missed the deadline unintentionally, that the delay

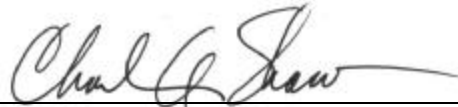
was for a short period of time, and that plaintiff will not suffer any prejudice as a result of the delay. Therefore, the Court will allow defendant to file its answer out of time and deny plaintiff's motion for default judgment.

Accordingly,

IT IS HEREBY ORDERED defendant AT&T Operations, Inc.'s motion for leave to file its answer out of time is **GRANTED**. [Doc. 9]

IT IS FURTHER ORDERED that AT&T Operations, Inc.'s motion for leave to file a response to plaintiff's motion for default judgment is **GRANTED**. [Doc. 12]

IT IS FURTHER ORDERED that plaintiff Jerry Perkins's motion for default judgment is **DENIED**. [Doc. 6]

A handwritten signature in black ink, appearing to read "Charles A. Shaw", written over a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 11th day of May, 2010.